



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 180117042-8884-02]

RTID 0648-XB635

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; quota adjustment and closure of the Atlantic bluefin tuna General category December fishery for 2021.

**SUMMARY:** NMFS adjusts the Atlantic bluefin tuna (BFT) General category December 2021 subquota by adding 15.5 metric tons (mt) of quota remaining from the September and October through November subquotas resulting in a total adjusted December subquota of 54.6 mt and simultaneously closes the General category fishery for large medium and giant (*i.e.*, measuring 73 inches (185 centimeters)) curved fork length or greater) BFT for the December subquota time period, and thus for the remainder of 2021. This action applies to Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

**DATES:** The quota adjustment is effective December 13, 2021, through December 31, 2021. The closure is effective 11:30 p.m., local time, December 14, 2021, through December 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** Larry Redd, Jr.,

[larry.redd@noaa.gov](mailto:larry.redd@noaa.gov), 301-427-8503, Nicholas Velseboer, [nicholas.velsboer@noaa.gov](mailto:nicholas.velsboer@noaa.gov), 978-281-9260, or Thomas Warren, [thomas.warren@noaa.gov](mailto:thomas.warren@noaa.gov), 978-281-9347.

**SUPPLEMENTARY INFORMATION:** Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS files a closure action with the Office of the **Federal Register** for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on or after the effective date and time of a closure notice for that category until the opening of the relevant subsequent quota period or until such date as specified.

The 2021 baseline quota for the General category is 555.7 mt. The General category baseline subquota for the December time period is 28.9 mt. Effective January 1, 2021, NMFS transferred 19.5 mt of BFT quota from the December 2021 subquota time-period to the January through March 2021 subquota time-period resulting in an adjusted subquota of 9.4 mt for the December 2021 time period (85 FR 83832, December 23, 2020). NMFS recently transferred 9.5 mt of Reserve category and 20.2 mt from the Harpoon category to the General category resulting in an adjusted December subquota of 39.1 mt (86 FR 66975, November 24, 2021). Based on landings data received to date, NMFS has determined that the adjusted September and October through November time

period subquotas were underharvested by 10.7 mt and 4.8 mt, respectively. Thus, 15.5 mt remains available from previous time periods.

### **Quota Adjustment**

Under § 635.27(a)(1)(ii), NMFS has the authority to adjust each period's apportionment based on overharvest or underharvest in the prior period, after considering determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota adjustment. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by tuna dealers provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the summer/fall and winter fisheries in the last several years) and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). To date, preliminary landings data indicate that the General category September fishery landed 196.6 mt of the adjusted 207.3 mt subquota (86 FR 51016, September 14, 2021) before closing, resulting in an underharvest of 10.7 mt ( $207.3 \text{ mt} - 196.6 \text{ mt} = 10.7 \text{ mt}$ ) and the October through November fishery landed 207.4 mt of the adjusted 212.2 mt subquota (86 FR 54873, October 5, 2021) by the end of the October through November time period, resulting in an underharvest of 4.8 mt ( $212.2 \text{ mt} - 207.4 \text{ mt} = 4.8 \text{ mt}$ ). Adjusting the December 2021 subquota by adding the September and October through November subquotas underharvest of 15.5 mt ( $10.7 \text{ mt} + 4.8 \text{ mt} =$

15.5 mt) would result in a total of 54.6 mt (39.1 mt + 15.5 mt = 54.6 mt) being available to the General category in December. Without a quota adjustment at this time, NMFS would likely need to close the General category fishery immediately, and participants would have to stop BFT fishing activities while commercial-sized BFT remain available in the areas where General category permitted vessels operate at this time of year.

Regarding the projected ability of the vessels fishing under the General category quota to harvest the additional amount of BFT quota before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors, such as the restrictions that some dealers placed on their purchases of BFT from General category participants this year. Thus, this quota adjustment would allow fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the BFT fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2021 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. Earlier this year, NMFS took such an action to carryover the allowable 127.3 mt of underharvest from 2020 to 2021 (86 FR 54659, October 4, 2021). NMFS will need to account for 2021 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that based on anticipated underharvest due to landings of some quota categories being substantially less than the available quotas for those categories.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the adjustment on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This adjustment would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations (established in Recommendation 17-06 and maintained in Recommendation 20-06), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota adjustment is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and its amendments, including to achieve optimum yield on a continuing basis and to allow all permit categories a reasonable opportunity to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunities equitably across all time-periods.

Given these considerations, NMFS is adjusting the General category December 2021 subquota by adding 15.5 mt of quota remaining from the September and October through November subquotas. Therefore, NMFS adjusts the General category December 2021 subquota to 54.6 mt.

### **Closure of the December 2021 General Category Fishery**

As of December 13, 2021, reported landings for the General category December subquota time period total approximately 44 mt. Based on these landings data, as well as average catch rates and anticipated fishing conditions, NMFS projects the adjusted December 2021 subquota of 54.6 mt will be reached shortly. Therefore, retaining, possessing, or landing large medium or giant (*i.e.*, measuring 73 inches (185 cm) curved

fork length or greater) BFT by persons aboard vessels permitted in the Atlantic Tunas General category and HMS Charter/Headboat permitted vessels (while fishing commercially) must cease at 11:30 p.m. local time on December 14, 2021. The General category will automatically reopen January 1, 2022, for the January through March 2022 subquota time period. This action applies to Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT and is taken consistent with the regulations at § 635.28(a)(1). The intent of this closure is to prevent overharvest of the available December subquota.

Fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may catch-and-release and tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the “Careful Catch and Release” brochure available at <https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/>.

### **Monitoring and Reporting**

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS’ ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by

accessing [hmspermits.noaa.gov](https://hmspermits.noaa.gov), using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

## **Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is taken pursuant to regulations at 50 CFR part 635, which were issued pursuant to section 304(c), and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. This fishery is currently underway and delaying this action would be contrary to the public interest as it could result in BFT landings exceeding the adjusted December 2021 General category quota. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest as such a delay would likely result in an earlier closure of the fishery while fish are available on the fishing grounds. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 13, 2021.

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Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

